

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 20,183
)	
Appeal of)	

INTRODUCTION

The petitioner filed this appeal with the Board following disagreements he had, and continues to have, with the local community mental health services organization of which he is a client. The issue is whether the Board has jurisdiction to consider the petitioner's grievance.

RECOMMENDATION

The petitioner's appeal is dismissed for lack of subject matter jurisdiction.

DISCUSSION

The petitioner is presently on probation. As a sentencing condition of his probation he must "abide" by the "case plan" developed and supervised by his local community mental health agency.

The petitioner lives in an isolated rural area and is limited by his circumstances and his case plan in the type and frequency of community contact. The petitioner disagrees with several aspects of his case plan, and he feels he is not

getting the level and types of services he needs. In particular, the petitioner feels he should be living in a group home and be allowed more community contact. He alleges he has pursued his grievances unsuccessfully with the director of the community mental health agency and with his probation officer. He states he was advised by Vermont Legal Aid to file an appeal with the Human Services Board. However, Legal Aid has informed the Board that it is not representing the petitioner.

At the hearings in this matter, held on April 25 and June 27, 2006 (the former by phone), the petitioner was unable to cite any particular failing of any state agency under the aegis of the Human Services Board, including the Departments of Health, Mental Health Division and Disabilities, Aging and Independent Living (DAIL), to act in accordance with any of *their* policies or procedures.

It appears that the local community mental health service in question operates, at least partially, under funding and supervision from DAIL and the Department of Health. Although it also appears that the Board has general appellate jurisdiction over these agencies, the developmental disabilities statutes specifically prevent the Board from reversing or modifying a decision "that is consistent with

the system of care plan and the rules of the department" unless such a decision "is in conflict with state or federal law". 18 V.S.A. § 8727(b). Similar constraints govern the Board's general review of decisions by DAIL, and all other agencies, under 3 V.S.A. § 3091(a).

In this case, there is the additional overarching problem that the petitioner's compliance with his "case plan" is ultimately supervised by the court that sentenced him to probation and by his probation officer. There is no question that the Human Services Board has no jurisdiction of any type over any court of law or the Department of Corrections.¹ See 3 V.S.A. § 3091(a).

In the absence of any medical or other expert evidence (which is the case here), it is doubtful that the Board would ever have the authority, much less the competence, to review the particular elements of any developmentally disabled person's case plan, or the professional judgements that enter into its formulation and implementation. Inasmuch as the petitioner in this case has not identified an issue of law or fact that the Board has subject matter jurisdiction to

¹ It is assumed that the petitioner was represented by an attorney at the time of his sentencing. If he has not already done so, the petitioner should make this attorney aware of his grievances.

consider at this time, his appeal must be dismissed. See
Fair Hearing No. 18,632.

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